THE

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CHRISTMAS HOLIDAYS AND THE HIGH COURT.

The High Court and the other Law Courts in the City will be closed for the Christmas Holidays from the 18th December to the 27th December 1911 both days inclusive. It has been the practice till now to close the Courts from the 23rd December 1911 to 2nd January 1912 both days inclusive. Apparently this departure is made for the convenience of those that proceed to the Delhi Durbar. We are sorry that in making this deviation, the convenience of the majority of the practitioners has not been consulted. In this connection we would draw attention to a resolution passed last Friday by the Madras High Court Vakils' Association, to request the Chief Justice to extend the holidays if not as usual, to the 3rd of January, 1912, at least to the 2nd of January. In view of the fact that by so extending the holidays, only two working days will have to be sacrificed, we sincerely trust that our amiable Chief Justice will be so good as to accede to this request.

DEDICATION OF MINOR GIRLS.

The decision of Spencer, J in [1911] 2 M. W. N. p. 479 deals with a question of general importance to the people of this country. All over the world the sinful traffic in minors for the purpose of prostitution has been obtaining in spite of social opprobium and strong legislative penalties. Dregs of society, representatives of Pander, Bawd, and Boult have been the curse of the human race. And, as Lucio confesses "The vice is of a great Kindred; but it is impossible to extirpate it quite, friar, till eating and drinking be put down." All that any Government can, therefore, do is to pass deterrent measures to prevent, as far as possible, the immoral contamination. Prostitution, *per se* is not a crime in the English law; but it becomes criminal when a person circumvents to corrupt or debauch chaste girls or women; or when it is committed so as to cause public annoyance. The former crime is dealt with by the Criminal Law Amendment Act, 1885, 48 and 49 Vict. C. 69, by which the following among others are declared mis-demeanors:—(1) Procuring any girl or woman under 21, not being a common prostitute or of known immoral character to have unlawful carnal connection......with any other person or persons, (2) Procuring or attempting to procure any woman or girl to be-

come......a common prostitute or an inmate of a brothel. The French criminal law does not take any cognizance of prostitution. But paragraph 334 of the Code renders the procuration of girls and boys under 21, a criminal offence. The German law which is more explicit declares in para 180 of the Imperial Code that *Kuppelei* is a penal offence, the term being defined to include every thing that promotes prostitution, either by procuration or by providing facilities of any kind. The Indian Penal Code deals with the unlawful and immoral disposing of minors in Ss. 372 and 373. One practical question of general importance in India arising in the application of this section is connected with the institution of *Deva Dasies.* The dedication of a minor girl to the temple deity, her adoption by a dancing girl, and similar acts by a *dasi* have been the subjects of Judicial consideration as to whether they would amount to such disposal as the section contemplates. For a long time it was the general misconception that the law cannot reach "dedication," because it formed part of the Hindu system, was a well recognised institution of the country and was so closely connected with the religious ceremonies of the bulk of the people that it would be impolitic, nay, illegal, to interfere with the custom. But fortunately this popular fallacy was knocked on the head by an able and pointed decision of the Madras High Court, in *In re. exparte Padmavathi* (5 Mad. H. C. R. 415). In that case three women were charged before the Sessions Judge of Chingleput, under Ss. 372 and 373, with disposing of two minor girls for the purpose of prostitution. The evidence in the case showed that R. and P. were dancing girls; that P. took the daughters of T. to be marked as a dancing girl; and that they were so marked. Their Lordships Holloway and Tunrer, JJ. state "The argument that the treatment of such a transaction as criminal is impossible, because the Hindoo religion sanctions the practice and the Private law recognises private rights as flowing from it is manifestly of no weight. An offence is every transgression of a Penal law and a rule of Penal law is a rule of public law, and necessarily overrides every precept of private law, and cannot be affected by any argument derived from that law." Although this pronouncement of their Lordships is quite clear as to the criminality of the act, still it was contended in some cases that there can be no disposal if, after dedication, the minor continues to live with the person with whom she resided before dedication. In other words attempts were made to restrict the terms of the section to such a disposing of the girl as involved some idea of transfer or removal. But even this contention has now been rendered untenable by a series of decisions; and it is settled law that the dedication of minors to the service of the Temple as *dasis* amounts to a disposal of such minors knowing it to be likely that they will be used for the purpose of prostitution. (1 Weir 359 and 364; 15 Mad. 41, 323; 16 Bom. 737). In *In re Arunachelam*, 1 M. 164, it has been expressly decided that it is not necessary that there should have been a disposal tantamount to a transfer of possession or control over the minor's person. And in a later case (15 M. 323), the same Court said, "seeing that the term in S. 372, I. P. C., is used in conjunction with selling and letting to hire, it would seem that the Legislature rather contemplated some physical disposal for a mercenary purpose or the exercise of some power

of control which would be final and irrevocable in its *moral* effects, more especially as the words used are, "sells, *lets to* hire, or otherwise disposes of, thus suggesting other acts of *ejusdem generis*." The decision of His Lordship Spencer J, is only another authoritative pronouncement that the penal law of the country, as it stands, is wide enough to reach all cases of devoting young girls to a life of prostitution under the cloak of religion.

In the case of a dancing girl adopting a daughter, it was held that she had committed no offence if the girl was to be brought up as a daughter, although the girl might have her choice of following the profession of prostitute or marrying; and that she would be guilty under the section, if the girl was adopted in order to follow the profession as a minor (12 Mad. 273). The Madras High Court limits the illegality of the adoption only to cases which involve the commission of an offence under the Penal Code (11 Mad. 492.) But in 21 Cal. 149 P. C. where the rights of Muhamadan girls adopted into certain family brothels were discussed, the Privy Council held that such customs were contrary to the policy of that community and that the law of the Koran prohibited intercourse with prostitutes as unlawful. The different stand-point alleged to be taken by the Hindus was incidentally referred to, but did not call for consideration. We may however state that immorality is certainly condemned by the Hindu shastras. Even apart from that, no custom, however ancient, is to be condoned, should it appear immoral and therefore opposed to the public weal. If young girls are taken to the great and small temples of this Presidency, where they are received by the churchwardens and marked and stamped as devotees of the pagoda, if they, by that symbolism, enter into the cotterie of dancing girls, and if such entrance into an admitted class of prostitutes has been rightly held to be criminal disposal why should adoption into that class be viewed otherwise? The institution is a notorious one and every member—that is the general rule—lives by the earnings of prostitution the religious services they are to attend, the mass they are to take part in, is nothing more than a thin veil to cover the real and substantial occupation of their lives. The Legislature could not have been ignorant of the existance of this community and of the ways in which it is sought to be kept up viz, adoption and dedication, and would not, therefore, the Legislature have used clear and decisive language if it was intended to keep this class safe from the arm of the law and allow its being recruited in the manner in which the reeruitment is done at present? If that were so, they would have expressed that intention as they have done in sec. 292 of the Penal Code in the case of obscene carvings on Hindu temples and cars. In *Chinna Ammayee and others* v. *S. T. Chetty*, 1 Mad. 168 where the suit was by a set of dancing girls, for a declaration of their right to the exclusion of all other *deva dasis*, save those related to or adopted by some one of the set, Innes and Kernan, JJ. remark "it is apparent that the court in making the declaration prayed for, would be recognising an immoral custom—a custom that is for an association of women to enjoy a monopoly of the gains of prostitution—a right, which on the score of morality alone, no court could countenance." The growing moral sense of the nation views the institution with disgust: and the arm of

the law must be long enough to reach all immoral and noxious canker in the social system which eats the vitals of the nation. When the Government passed the Pagoda Act of 1863, they yielded to a wrong sentiment that by undertaking a duty cast upon them as rulers, they would be identifying themselves with idolatory. The king as *parens patriæ* has the general superintendence of all charities and he exercises that right, in England, through the Lord High Chanceller, the keeper of his conscience. Towards the religious and charitable wealth of this country also the Emperor has the same obligation to perform. And no Government should tolerate a pernicious system connected with such trust—a system that is rooted in immorality and breeds vice and iniquity.

WEEK'S CASES.

20th November, 1911.

Benson, J. and Rahim, J.

C. M. A. No. 12 of 11.

In a suit to recover dower, the plaintiff a Mahomedan wife alleged in her plaint that she was promised 9 Vakkia of gold (meaning thereby a measure) at her marriage, *i.e.*, Rs. 2,572, which the defendant traversed by stating that the term Vakkia means only a coin and if the term is taken in that sense, it reduces the claim to below Rs. 2,500.

Held that the Court should understand the term Vakkia only in the sense the plaintiff gives it in her plaint and that it is not open to the defendant to say at that stage of the suit that it means something else and the order of the Lower Court directing the presentation of the plaint to the District Munsiff's Court is erroneous in law.

C. M. A. No. 222 of 10.

In a suit by the plaintiff to recover a mortgage-debt from the defendant, the latter paid the money into Court and stated that he is not liable to pay costs inasmuch as no demand was made on him before such suit and it is contended before the High Court that the rule as to payment of costs in Order 24, Rule 1, of the C. P. Code (new Code) does not apply to mortgage-debts, and that in this case, the law does not make it necessary that any demand should be made before suit, and so the order of the Lower Court directing a remand is erroneous.

Held that Order 24, Rule 1 applies also to suits on mortgages, and costs being entirely within the discretion of the Court, the order of the Lower Court need not be interfered with.

C. M. A. No. 9 of 11.

In a suit by the plaintiff to compel the defendant to receive from him Rs. 122 and odd the balance due under an ostensible deed of sale it was sought to prove an agreement entered into at the time that the purchaser should re-convey the property to the vendor when the whole amount of the consideration of the sale was discharged by him by seven annual instalments.

Held that the effect of the agreement was to convert the sale into mortgage, and following the decision in 25 Madras, evidence of an agreement for this purpose is not admissible under section 92 of I.E. Act.

21st November, 1911.

Sundara Aiyar, J. and Spencer, J.

S. A. No. 534 of 10.

In a suit to set aside a gift made by a mother of certain properties to her

daughter of a sixth share of the family property in performance of a promise made during marriage, it was contended that it is not open to a paternal uncle to make such a gift of ancestral property though it may be otherwise with regard to self-acquired property, (2) that the extent given in this case, is unreasonable.

Held (1) that other persons than a father or a brother, and in this case, a paternal uncle, can in due perfermance of a promise made during marriage, make a gift of ancestral property and that a reasonable portion of it ;

(2) that, where the extent is only 1/6th of the family properties it must be deemed to be reasonable;

(3) that it is not open to the father to make a gift of the whole ancestral property, though, even as regards self-acquired property, it may be doubted.

Sundara Iyer, J. and Spencer, J.

Criminal Appeal No. 416 of 1911.

Where the accused, working an engine, is guilty of negligence, under the Mysore Mining Act, but it is not proved what the real negligence *exactly* consisted in, it was *held* that the accused was entitled to an acquittal.

22nd November, 1911.

Benson, J. and Abdur Rahim, J.

C. M. S. A. No. 16 of 11.

A obtained a decree against B. He executed the decree and obtained satisfaction. B appealed and the Appellate Court reversed the decree,and ordered restitution. This decree in favour of B, was attached in execution of a decree obtained against B in another Court. Meanwhile B assigned his decree. The assignee applied for execution. It was contended that such an application is not a step in aid of execution or an application in accordance with law. *Held* that having regard to the 1st part of section 273, C.P.C. the application must be deemed to be one made in accordance with law.

Benson, J. and Rahim, J.

Second Appeal No. 1381 of 1909.

Where the judgment of the lower appellate court was vitiated by inconsistent findings, the High Court would interfere in Second Appeal.

23rd November, 1911.

Sundara Aiyar, J. and Spencer, J.

Criminal Revision Case No. 84 of 1911.

A reversioner cannot be convicted of theft if he cuts and carries away the crops grown on the land by a Hindu female who is dead, and at whose death, they are entitled to succeed her as reversioners, though not on the ground that they are entitled to the property left by her but at least on the ground that they will be presumed to have done the act under a *bona fide* claim of right.

Criminal Revision Case No. 299 of 1911.

Where on the report of a Deputy Tahsildar that accused carried on a procession in violation of the order promulgated by a public servant not to carry on such procession an offence punishable under section 88, I. P. C., it is not open to he Sub-Divisional Magistrate to accord sanction for prosecution under section 476, Cr. P. Code as the offence was not one committed by him in the course of a Judical proceeding and he has no jurisdiction to pass orders under that section.

Criminal Revision Case No. 557 of 1911.

Where a 2nd class Magistrate refers a case to the Sub-Divisional Magistrate for

enhancement of sentence it is not open to the latter to refer it back to the 2nd class Magistrate but must dispose of the case himself for the words "or pass such other Order" means an order finally disposing of the case.

Benson, J.

Criminal Revision Case No. 558 of 1911.

Where a Magistrate passed an order under Section 31 of the Court Fees Act in a case which a Police officer may arrest without warrant the order is one that must be set aside.

Benson, J.

Cr. R. C. 387 of 1911.

Where the accused was acquitted, in a night case, by a Bench of Magistrates; and where upon the same facts, he was convicted of assault by the Presidency Magistrate, *held* that the principle of *autrefois acquit* applied and that the conviction was illegal.

24th November, 1911.

Benson, J.

Criminal Revision Case No. 536 of 1911.

Where a person was charged and convicted of an offence under Act III of 1864, which was repealed by Act I of 1886, the conviction is one that is liable to be set aside; and a retrial ordered; but where it appears that no benefit would accrue to the accused by such order, the conviction may be allowed to stand, and the convicting Magistrate may be pointed out this error.

Benson, J.

Cr. R. C. 448 of 1911.

Held, that a single, solitary act of rowing a friend across a ferry without taking any hire from him by one not duly authorised under the Act does not amount to "working or establishing a ferry" within the meaning of S. 18 of the Canals and Public Ferries Act, Act 11 of 1890.

REVIEWS

The Law of Service Tenures in Bengal by Ranjit Sinha, B.A., B.L., Pleader, Bhaghalpur. Publishers, The Law Printing House, Mount Road, Madras.

We have much pleasure in reviewing this neat book of 80 pages which deals succinctly with the Law of Service Tenures in Bengal. The learned author divides Service Tenures into three broad classes:—(1) Jaghir, (2) Ghatwali and (3) Chakran. He traces the origin of each of these classes and collects the case bearing on each which are found scattered in the pages of the Reports. And we have no doubt that the book will be found very useful in Bengal.

Annuals from Messrs. Thompson & Co:— We have pleasure in acknowledging receipt of copies of the Annuals for 1912 from Messrs. Thompson & Co., Madras. They consist of a beautiful blotting pad and four diaries which are found to be very useful to every lawyer.